



**OPENING STATEMENT**

**BY**

**HE AMBASSADOR VB KOLOANE, SOUTH AFRICAN AMBASSADOR TO THE  
NETHERLANDS**

**GENERAL DEBATE:**

**SEVENTEENTH SESSION OF THE ASSEMBLY OF STATES PARTIES OF THE  
INTERNATIONAL CRIMINAL COURT**

**THE HAGUE**

**5-12 DECEMBER 2018**

*Check against delivery*



Mr President,

At 11:00 on 11 November this year, it was exactly one hundred years since the guns fell silent and the loss and horrors of the devastating First World War came to an end. This event was commemorated in solemn ceremonies across the world, also in South Africa, whose men fought both in Africa and Europe. Although becoming known as the “War to end all wars”, we know that was not to be.

Last year, in the early morning hours of 13 December, a rather less momentous, but in no way insignificant, event took place in New York during the sixteenth session of the Assembly of States Parties, an event that can be directly linked to a thread of history running from the First World War. The devastation and human loss of that war endure in our collective memories until today, and resulted in a renewed sense to search for peace, to outlaw aggressive war. There were notable milestones on this road, the General Treaty for the Renunciation of War of 1928, Article 2(4) of the Charter of the United Nations, the conference in Rome in 1997 that adopted, in principle, a provision that criminalised aggression, but could not agree on a definition.

But in New York, the States Parties gathered here activated the Court’s jurisdiction over the Crime of Aggression. After tortuous negotiations over many years to find consensus on a definition and the modalities for the exercise of jurisdiction, these would all come together at the Kampala Review Conference. However, finding a compromise on the resolution to activate the Court’s jurisdiction, was the main course on the menu of ASP 16. After intense negotiations during which the clock had to be stopped, the resolution on activation was adopted. While some may criticise the outcome as being territorially more limited as initially envisaged, it should be noted that for the first time since the end of the Second World War, an international tribunal will have jurisdiction over the Crime of Aggression. For this great achievement, the chairs, facilitators, delegates, members of civil society and individuals who have worked tirelessly over many years since the adoption of the Rome Statute, deserve our gratitude. This achievement is a monument to multilateralism and international cooperation.



Mr President,

In the year that we celebrate the twentieth anniversary of the Rome Statute, we must also look carefully at the implementation of the mandate of the International Criminal Court. It is no understatement to say that there were some unexpected bumps and stones in the road that we have taken since then. The uncertainty regarding the scope and reach of Security Council decisions on the referral of situations is a particularly sharp stone. While Article 13(b) of the Rome Statute provides the authority to the Security Council, when acting under its Chapter VII peace and security mandate, to refer a situation to the Court, the referral resolutions have caused a lot of uncertainty. While it is often said that the price of consensus is ambiguity, nobody will deny that legal obligations should be clearly formulated, and that there must also be clarity regarding those who are bound by such obligations. This principle cannot be better illustrated than by the *Namibia* and *Kosovo* Advisory Opinions of the International Court of Justice, where it held that the intention of the members of the Security Council must be clear when they adopt binding resolutions, both for determining the binding effect of a resolution and to establish who will be bound by the resolution. Needless to say, and as argued by South Africa before the Court, referral resolutions rather represent muddy water than a sparkling mountain fountain. There is a clear need for a process to guide the adoption of Article 13(b) resolutions in order to ensure more clarity as to their scope and effect.

Mr President,

It is to be welcomed that the Assembly of States Parties attaches great importance to intensifying dialogue with the African Union. This is long overdue. We commend the continued engagement that took place between the Court and the African Union over the past year. We support the intention of continued dialogue on the relationship between Africa and the Court. Frank and constructive dialogue is the only way to counter perceptions of bias that the Court is unfairly targeting Africa. Such dialogue takes place against the backdrop of the African Union and its member states remaining actively engaged in addressing conflict, promoting accountability and justice and building peace in Africa. Only through the consistent pursuit of peace and security can we promote sustainable growth and stability on the continent.



Mr President,

We cannot lose sight of the fact that equitable geographic distribution in the staffing levels of the Court remains one of the most serious challenges in the management of the Court. Reaching a more equitable balance between all geographic regions at all staff levels is an objective that should be pursued with the utmost vigour. My delegation wishes to commend the Court on joining the "International Gender Champions network". We reiterate the sentiments of the President of the Court that the ICC needs to reflect in all relevant policies the goal of equal representation of men and women from all regions in its workforce.

We also commend the work of the Working Group on the Revision of the Judges' Remuneration. We support the establishment of a mechanism which can advise the Assembly of States Parties on this sensitive matter.

While on money matters, we trust that the flexibility and pragmatism displayed by delegations in previous years, will make it possible for us to come to an early consensus on the Court's budget for 2019.

Mr President,

Speaking of the management issues at the Court presents us with an opportunity to congratulate Mr Peter Lewis with his election as Registrar of the Court, and to wish him much success in this all-important role.

Thank you.

